

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MAURICE PENNY, SR., Register No. 50243,)	
)	
Plaintiff,)	
)	
v.)	No. 08-4262-CV-C-SOW
)	
DEWAYNE CAREY, et al.,)	
)	
Defendants.)	

ORDER

On December 11, 2008, United States Magistrate Judge William A. Knox recommended dismissing plaintiff's claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on December 19, 2008. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. Plaintiff's allegation that the county jail, where he is incarcerated as a pretrial detainee, does not have a law library fails to state a claim under 42 U.S.C. § 1983. The lack of a law library does not deny a pretrial detainee access to courts if he has an attorney. Johnson-El v. Schoemehl, 878 F.2d 1043, 1052 (8th Cir. 1989) (no denial of access to courts if pretrial detainee is provided either an adequate law library or adequate assistant from persons trained in the law).

The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of December 11, 2008, is adopted. [6] It is further

ORDERED that plaintiff's claims are dismissed, pursuant to 28 U.S.C. § 1915A, for failure to state a claim for which relief can be granted. It is further

ORDERED that plaintiff's motions for a preliminary injunction and temporary restraining order are denied. [9]

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: April 14, 2009